

John & Kristen Marois
303 Curtis Farm Road
Wilton, NH 03086

April 9, 2020

CONTENTS

Wilton, NH ZBA Chair, Mr. Neil Faiman

Dear Mr. Faiman,

Below is a list of the documents & attachments in electronic form that are pertaining to the appeal. The payment for the application fee (\$160) and labels are being submitted to Town Hall via the drop box or USPS.

Application: Contents page (1), Cover letter (1), Application (4), Abutter list (3).
Total (9 pages)

Ordinance: Wilton ZBA ordinance section 25 (3), NH RSA 674:21(4).
Total (7 pages)

Supporting Documents: Timeline (1), Emails & Impact fee invoice leading up to appeal (6).
Total (7 pages)

Sincerely,
John & Kristen Marois

John & Kristen Marois
303 Curtis Farm Road
Wilton, NH 03086

April 9, 2020

Wilton, NH ZBA Chair, Mr. Neil Faiman

Dear Mr. Faiman,

We are appealing an administrative decision based on the interpretation and / or the application of the terms of section 25 in the Wilton zoning ordinance. The language of the town ordinance 25.5.2 mirrors the state statute 674:21.V.d and states "impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit" (emphasis added) Had this fee been assessed within the statutory language and intent of the law, we would have taken the fee into consideration and that would have played a factor in whether we decided to move forward with the project or not.

We had been considering a project like this for many years and began discussions with the building department in early October of 2019. Building Inspector Norma Ditri was very helpful, printed out & provided us the zoning ordinance section 5.0 through 6.4.3 (pages A-11 – A-18) and informed us what we were thinking of doing was considered an ADU, and after review said our intent meets the zoning. We applied and the permit was approved on October 21, 2019. The Impact fee had never been mentioned prior to, upon issue of permit, or until much later. The following content page and attachments will describe the events in greater detail.

Despite our appeal we would like to thank Mr. Faiman and all board members for the service you provide to the Town of Wilton and its residents over the years. We understand how important a role the ZBA is in town government.

Sincerely,

John & Kristen Marois



Town of Wilton, NH
Application to the Zoning Board of Adjustment
(Revised January 2011)

General Information, Page 1 of 3

Property Information

Describe the lot involved in the application (the lot that you want to build a building on, subdivide, conduct a business or other activity on, etc.). If more than one lot is involved, then describe them all in this space if it is convenient, or attach additional copies of this page.

Tax Map and Lot Number B-39-3 Lot Size 12.03 Acres

Street Address 303 Curtis Farm Road

Zoning District (check one):

- ☐ Residential ☒ General Residence and Agricultural
☐ Commercial ☐ Industrial ☐ Office Park

Relevant Overlay Districts (check any that apply):

- ☐ Research and Office Park ☐ Floodplain Conservation ☐ Watershed
☐ Wetlands Conservation ☐ Aquifer Protection ☐ Elderly Housing

Owner

If the application involves multiple lots with different owners, attach additional copies of this page.

Name The John and Kristen Marcio Joint Revocable Trust

Mailing address 303 Curtis Farm Road

Mailing address _____

Town, State, ZIP Wilton, NH 03086

This application must be signed by the owners of all lots involved in the application.

I approve the submission of this application. If an applicant or representative is named on the next page, the person named there has my permission to represent me before the Wilton Zoning Board.

Signature John Marcio, Trustee

Date 4-7-20

Trustee
(continued on the next page)

clerk use only

Date and time received: _____

Received by: _____ Amount paid: _____

Case #: _____ ☐ Abutter list and labels included



Town of Wilton, NH
Application to the Zoning Board of Adjustment
(Revised January 2011)
General Information, Page 2 of 3

Applicant

The applicant is the person who actually wants to build the building, conduct the business, etc. This is usually the same as the property owner, but might be a tenant, someone who plans to purchase the property, etc. If the applicant is the same as the owner, just check "Same as owner" and leave the rest of this section blank.

☒ Same as owner

Name _____
Mailing address _____
Mailing address _____
Town, State, ZIP _____

Signature of Applicant or Owner

I certify that to the best of my knowledge and belief, all information provided in this application is accurate.

Signature John Morris Tassie Date 4-7-20
4-5-20

Representative

Fill out this section if the application is being submitted by a realtor, surveyor, engineer, attorney, etc., on behalf of the actual owner or applicant.

Name _____
Mailing address N/A
Mailing address _____
Town, State, ZIP _____

I authorize the above-named representative to submit this application and to speak before the Zoning Board on my behalf.

Signature of applicant or owner

Signature _____ Date _____

(continued on the next page)



Town of Wilton, NH
Application to the Zoning Board of Adjustment
(Revised January 2011)
General Information, Page 3 of 3

Contact Information

How can we get in touch with the applicant or the applicant's representative, if there are questions about or problems with the application? Provide at least one of the following. If you provide more than one, please check your preferred form of contact.

This information is for: ☒ the applicant ☐ the representative.

☐ Daytime phone [redacted] ☐ Evening phone [redacted]
☐ Work E-mail [redacted] ☒ Personal e-mail [redacted]

Proposed Use

Explain what you want to do with the property. (Do you want to build a building, subdivide a lot, have a business, ...).

Explain why you need the Zoning Board to let you do it. (The building will be too close to the lot line; the Planning Board wouldn't approve your subdivision; your lot is in a zoning district where businesses aren't allowed; ...).

Be specific. Identify the section or sections of the Zoning Ordinance that apply. If lot sizes or configurations or building placements are relevant, provide a scale drawing or plan showing all relevant information, such as lot lines, setbacks, present and proposed structures on your lot and neighboring lots, etc.

Description of proposed use and need for ZBA approval (use this page; attach additional pages as necessary):

Appeal Administrative decision



Town of Wilton, NH
Application to the Zoning Board of Adjustment
(Revised January 2010)
Appeal of an Administrative Decision

If any Town official or board has denied you permission to do something, refused to issue you a permit or other approval, or has taken enforcement action against you, and the decision or action is based on what you believe to be an incorrect interpretation or application of the terms of the Wilton Zoning Ordinance, you may appeal that decision to the Zoning Board.

The Zoning Board does not have any authority to review a discretionary decision to commence formal or informal enforcement proceedings, or a decision based on any law or regulation other than the Wilton Zoning Ordinance.

If you wish to appeal an administrative decision to grant a permit or other approval for the use of property not belonging to you, please use the *Third-Party Appeal of Administrative Decision* Form.

For more information, please refer to RSA 674:33, I(a) and RSA 676:5.

An appeal of an administrative decision must be filed within 30 days of when the decision was made.

You must attach a copy of the decision notice with this appeal. If the decision was made by a board, you should also attach a copy of the minutes of the meeting at which the decision was made. **The Zoning Board cannot review an informal or verbal decision.**

What is the decision that you are appealing? Accessory Unit Impact Fee
Assessed 3-12-20 For Permit issued 10-21-19
Requesting full refund / Abatement

What Town official or board made the decision? Building Inspector - Norma Ditri

What sections of the Zoning Ordinance was the decision based on? 25 Entirely And 25.5.2

Why do you believe that the decision was incorrect? Statutory language and intent
of Law state "impact fees SHALL be assessed prior
to, or as a condition for, the issuance of a building permit,"
THE Impact Fee Assessed WAS nearly 5 months after
the permit was issued. We feel the interpretation +/-
application of the terms of the ordinance is not
consistent with the intent of the law,

April 7, 2020

Abutter List for lot B-39-3, 303 Curtis Farm Road, Wilton NH 03086

Lot D-86

Malcolmson Family Trust

David & Debra Malcolmson, Trustees

63 Hillside Road

Wilton, NH 03086

Lot B-39-1

Hahnl Revocable Trust of 2020

Thomas & Ann Hahnl, Trustees

297 Curtis Farm Road

Wilton, NH 03086

Lot B-35-2

Stuart & Leslie Browne

304 Curtis Farm Road

PO Box 1186

Wilton, NH 03086

Lot B-39-2

Matthew Black & Susan Ciatto

309 Curtis Farm Road

Wilton, NH 03086

Lot B-38

Ciardelli Family Revocable Trust

Gary & Marilyn Ciardelli, Trustees

315 Curtis Farm Road

Wilton, NH 03086

Lot B-36

Grayson and Natalie Parker Family Revocable Trust

Grayson, Natalie, & Glen Parker, Trustees

179 Pead Hill Road

Wilton, NH 03086

Lot D-84-4

Edward and Maura Feller

134 Kelleher Street

Marlborough, MA 01752

Lot D-84-5

Walter & Robin Abbott

3 Hutchinson Road

Merrimack, NH 03054

Lot B-39-3

John M & Kristen L Marois Joint Revocable Trust

John & Kristen Marois, Trustees

303 Curtis Farm Road

Wilton, NH 03086

Lot B-39-T-3

(This lot is not actually a separate lot from B-39-3 but listed that way for real estate taxes & pops up as an abutter to B-39-3)

John M & Kristen L Marois Joint Revocable Trust

John & Kristen Marois, Trustees

303 Curtis Farm Road

Wilton, NH 03086



Town of Wilton, NH Zoning Ordinance

This online version of the Zoning Ordinance has not been checked for accuracy. Neither the Town of Wilton nor the Zoning Board can be responsible for the consequences of any action taken on the basis of any errors in the online text. The official text of the Wilton Zoning Ordinance is available in printed form at the Wilton town offices, and as a PDF file on the Town of Wilton web site.

This is the 2019 version of the Zoning Ordinance, including all amendments up to and including those passed by Town Meeting in March, 2019, but *not* any amendments passed in 2020 or later.

25.0 Impact Fees (adopted March, 2001)

- 25.1 Purpose.
- 25.2 Definitions.
- 25.3 Authority to Assess Impact Fees.
- 25.4 Assessment Methodology.
- 25.5 Administration of Impact Fees.
- 25.6 Return of Impact Fees.
- 25.7 Applicability.
- 25.8 Review and Establishment of Fees.
- 25.9 Waiver of Impact Fees.
- 25.10 Appeal of Impact Fee Assessment.

25.1 *Purpose. (Amended March 2011.)*

This ordinance is enacted pursuant to RSA 674:21, and in order to:

- a. Promote the public health, safety, welfare and prosperity;
- b. Assist in the implementation of the Master Plan and Capital Improvements Program;
- c. Enable the Town of Wilton to assess an equitable share of the cost of public capital facilities to new development in proportion to its demand on those facilities;
- d. Provide authority for the Planning Board to adopt proportionate impact fee assessments, and related regulations for administration thereof.

25.2 *Definitions.*

- 25.2.1 Impact Fee.** A fee or assessment imposed upon development, including subdivision, building construction or other land-use change, in order to help meet the needs occasioned by the development for the construction or improvement of capital facilities owned or operated by the Town of Wilton, including and limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; public road systems and rights-of-way; municipal office facilities; public school facilities; the municipality's proportional share of capital facilities of a cooperative or regional school district of which the municipality is a member; public safety facilities; solid waste

collection, transfer, recycling, processing and disposal facilities; public libraries; and public recreation facilities, not including open space.

25.2.2 New Development. For the purpose of impact fee assessment, new development may include the following land use changes: *(March 2011)*

- a. The construction of any new dwelling unit; or
- b. Changes to an existing structure that would result in a net increase in residential living area or the number of dwelling units (Amended March 2018); or
- c. Construction of a new commercial/industrial building or any net increase in the gross floor area of an existing commercial/industrial building; or
- d. The conversion of an existing use to another use that is determined by the Planning Board, to result in a measurable net increase in the demand on the public capital facilities that are the subject of impact fee assessment; however,
- e. New development shall not include the replacement of an existing manufactured housing unit or the reconstruction of a structure that has been destroyed by fire or natural disaster where there is no change in size, density, or type of use that would increase the demand on capital facilities for which impact fees are assessed.

25.2.3 Off-Site Improvements. Improvements that are necessitated by a development but which are located outside the boundaries of the property that is subject to a subdivision or site plan approval by the Planning Board, and limited to necessary highway, drainage, and sewer and water upgrades pertinent to that development. *(March 2011)*

25.2.4 School District. The Wilton School District, the Wilton-Lyndeborough School District, or another regional or cooperative school district of which the Town of Wilton becomes a member municipality. *(March 2011)*

25.3 Authority to Assess Impact Fees.

The Planning Board is hereby authorized to assess impact fees, as herein defined, and in accordance with the standards herein set forth. The Planning Board shall have the authority to adopt regulations to implement the provisions of this ordinance. The Impact Fee Schedule is separate from this ordinance and is reviewed and amended as set forth in the Review and Establishment of Fees section below. The Impact Fee Schedule shall be located in Appendix VIII. *(Amended March 2004.)*

25.4 Assessment Methodology.

The amount of any impact fee shall be a proportional share of municipal capital improvement costs which is reasonably related to the capital needs created by new development, and to the benefits accruing to new development from the capital improvements financed by the fee. Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees. *(Amended March 2011)*

25.5 Administration of Impact Fees. (Amended March 2004.)

25.5.0.1 Imposition of Impact Fees.

1. Any person who, after the initial date of adoption of an Impact Fee Schedule, seeks to undertake new development within the Town of Wilton, New Hampshire, by applying for a building permit or permit for manufactured home installation and who is not vested under RSA 674:39, is hereby required to pay impact fees in the manner set forth in this Section.

2. No new building permit or new permit for manufactured home installation or any activity requiring payment of an impact fee pursuant to this Section of this Ordinance shall be issued unless and until the public capital facilities impact fees hereby required have been determined.
3. Impact Fees assessed to new development on lots created as part of a new subdivision of land shall be subject to the Impact Fees set forth in the Impact Fee Schedule in effect at the time and date of subdivision approval and recording at the Hillsborough County Registry of Deeds (HCRD). The fee schedule in effect at the time of the subdivision approval shall remain applicable to development on those lots for a period of time as determined by RSA 674:39, or five years in the event no time is specified in the statute. Subsequent construction on those lots will be subject to the fee schedule in effect at the time a building permit application is received. *(Amended March 2011, March 2018)*

25.5.1 Each impact fee shall be accounted for separately, shall be segregated from the Town's general fund, may be spent upon order of the Board of Selectmen, and shall be used solely for the capital improvements for which it was collected, or to recoup the cost of capital improvements made in anticipation of the needs for which fees are collected to meet.

25.5.2 Impact fees shall be assessed at the time of Planning Board approval of a subdivision or site plan. When no Planning Board approval is required, or has been made prior to the adoption or amendment of the impact fee ordinance or fee schedule, impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit or other appropriate permission to proceed with development. *(Amended March 2011)*

25.5.3 Between the date of assessment and collection, the Planning Board may require developers to post security, in the form of cash bond, letter of credit or performance bond so as to guarantee future payment of assessed impact fees.

25.5.4 Impact fees shall be collected as a condition for the issuance of a Certificate of Occupancy. *(Amended March 2011)*

25.5.5 The Planning Board and the assessed party may establish an alternate, mutually acceptable schedule of payment of impact fees.

25.6 Return of Impact Fees.

25.6.1 If the full impact fee assessed under this Ordinance is not encumbered or otherwise legally bound to be spent for the purpose for which it was collected within six (6) years, the fee shall be refunded to the owner of record of the assessed property, with any accrued interest. *(Amended March 2011)*

25.6.2 Whenever the calculation of the impact fee has been predicated upon some portion of capital improvement costs being borne by the Town or School District, a refund shall be made upon the failure of the Town or School District to appropriate its share of the capital improvement costs within six (6) years from the date of payment thereof. *(Amended March 2011)*

25.7 Other Authority Retained.

25.7.1 This ordinance shall not be deemed to affect the existing authority of the Planning Board over subdivisions and site plans, including, but not limited: *(Amended March 2011)*

- a. The authority to declare a development to be premature or scattered in accordance with the regulations of the Board and in accordance with RSA 674:36, II(a); and
- b. The authority to impose exactions for off-site improvements necessitated by a development during the subdivision or site plan review process, in accordance with RSA 674:21, V(j).

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Zoning

Section 674:21

674:21 Innovative Land Use Controls. –

I. Innovative land use controls may include, but are not limited to:

- (a) Timing incentives.
- (b) Phased development.
- (c) Intensity and use incentive.
- (d) Transfer of density and development rights.
- (e) Planned unit development.
- (f) Cluster development.
- (g) Impact zoning.
- (h) Performance standards.
- (i) Flexible and discretionary zoning.
- (j) Environmental characteristics zoning.
- (k) Inclusionary zoning.
- (l) Impact fees.
- (m) Village plan alternative subdivision.
- (n) Integrated land development permit option.

II. An innovative land use control adopted under RSA 674:16 may be required when supported by the master plan and shall contain within it the standards which shall guide the person or board which administers the ordinance. An innovative land use control ordinance may provide for administration, including the granting of conditional or special use permits, by the planning board, board of selectmen, zoning board of adjustment, or such other person or board as the ordinance may designate. If the administration of the innovative provisions of the ordinance is not vested in the planning board, any proposal submitted under this section shall be reviewed by the planning board prior to final consideration by the administrator. In such a case, the planning board shall set forth its comments on the proposal in writing and the administrator shall, to the extent that the planning board's comments are not directly incorporated into its decision, set forth its findings and decisions on the planning board's comments.

III. Innovative land use controls must be adopted in accordance with RSA 675:1, II.

IV. As used in this section:

- (a) "Inclusionary zoning" means land use control regulations which provide a voluntary incentive or benefit to a property owner in order to induce the property owner to produce housing units which are affordable to persons or families of low and moderate income. Inclusionary zoning includes, but is not limited to, density bonuses, growth control exemptions, and a streamlined application process.
- (b) "Phased development" means a development, usually for large-scale projects, in which construction of public or private improvements proceeds in stages on a schedule over a period of years established in the subdivision or site plan approved by the planning board. In a phased development, the issuance of building permits in each phase is solely dependent on the completion of the prior phase and satisfaction of other conditions on the schedule approved by the planning board. Phased development does not include a general limit on the issuance of building permits or the granting of subdivision or site plan approval in the municipality, which may be accomplished only by a growth management ordinance under RSA 674:22 or a temporary moratorium or

limitation under RSA 674:23.

V. As used in this section "impact fee" means a fee or assessment imposed upon development, including subdivision, building construction, or other land use change, in order to help meet the needs occasioned by that development for the construction or improvement of capital facilities owned or operated by the municipality, including and limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; municipal road systems and rights-of-way; municipal office facilities; public school facilities; the municipality's proportional share of capital facilities of a cooperative or regional school district of which the municipality is a member; public safety facilities; solid waste collection, transfer, recycling, processing, and disposal facilities; public library facilities; and public recreational facilities not including public open space. No later than July 1, 1993, all impact fee ordinances shall be subject to the following:

(a) The amount of any such fee shall be a proportional share of municipal capital improvement costs which is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee. Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees.

(b) In order for a municipality to adopt an impact fee ordinance, it must have enacted a capital improvements program pursuant to RSA 674:5-7.

(c) Any impact fee shall be accounted for separately, shall be segregated from the municipality's general fund, may be spent upon order of the municipal governing body, shall be exempt from all provisions of RSA 32 relative to limitation and expenditure of town moneys, and shall be used solely for the capital improvements for which it was collected, or to recoup the cost of capital improvements made in anticipation of the needs which the fee was collected to meet.

(d) All impact fees imposed pursuant to this section shall be assessed at the time of planning board approval of a subdivision plat or site plan. When no planning board approval is required, or has been made prior to the adoption or amendment of the impact fee ordinance, **impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit** or other appropriate permission to proceed with development. Impact fees shall be intended to reflect the effect of development upon municipal facilities at the time of the issuance of the building permit. Impact fees shall be collected at the time a certificate of occupancy is issued. If no certificate of occupancy is required, impact fees shall be collected when the development is ready for its intended use. Nothing in this subparagraph shall prevent the municipality and the assessed party from establishing an alternate, mutually acceptable schedule of payment of impact fees in effect at the time of subdivision plat or site plan approval by the planning board. If an alternate schedule of payment is established, municipalities may require developers to post bonds, issue letters of credit, accept liens, or otherwise provide suitable measures of security so as to guarantee future payment of the assessed impact fees.

(e) The ordinance shall establish reasonable times after which any portion of an impact fee which has not become encumbered or otherwise legally bound to be spent for the purpose for which it was collected shall be refunded, with any accrued interest. Whenever the calculation of an impact fee has been predicated upon some portion of capital improvement costs being borne by the municipality, a refund shall be made upon the failure of the legislative body to appropriate the municipality's share of the capital improvement costs within a reasonable time. The maximum time which shall be considered reasonable hereunder shall be 6 years.

(f) Unless otherwise specified in the ordinance, any decision under an impact fee ordinance may be appealed in the same manner provided by statute for appeals from the officer or board making that decision, as set forth in RSA 676:5, RSA 677:2-14, or RSA 677:15, respectively.

(g) The ordinance may also provide for a waiver process, including the criteria for the granting of such a waiver.

(h) The adoption of a growth management limitation or moratorium by a municipality shall not affect any development with respect to which an impact fee has been paid or assessed as part of the approval for that development.

(i) Neither the adoption of an impact fee ordinance, nor the failure to adopt such an ordinance, shall be deemed to affect existing authority of a planning board over subdivision or site plan review, except to the extent expressly stated in such an ordinance.

(j) The failure to adopt an impact fee ordinance shall not preclude a municipality from requiring developers to pay an exaction for the cost of off-site improvement needs determined by the planning board to be necessary for the occupancy of any portion of a development. For the purposes of this subparagraph, "off-site improvements" means those improvements that are necessitated by a development but which are located outside the boundaries

of the property that is subject to a subdivision plat or site plan approval by the planning board. Such off-site improvements shall be limited to any necessary highway, drainage, and sewer and water upgrades pertinent to that development. The amount of any such exaction shall be a proportional share of municipal improvement costs not previously assessed against other developments, which is necessitated by the development, and which is reasonably related to the benefits accruing to the development from the improvements financed by the exaction. As an alternative to paying an exaction, the developer may elect to construct the necessary improvements, subject to bonding and timing conditions as may be reasonably required by the planning board. Any exaction imposed pursuant to this section shall be assessed at the time of planning board approval of the development necessitating an off-site improvement. Whenever the calculation of an exaction for an off-site improvement has been predicated upon some portion of the cost of that improvement being borne by the municipality, a refund of any collected exaction shall be made to the payor or payor's successor in interest upon the failure of the local legislative body to appropriate the municipality's share of that cost within 6 years from the date of collection. For the purposes of this subparagraph, failure of local legislative body to appropriate such funding or to construct any necessary off-site improvement shall not operate to prohibit an otherwise approved development.

(k) Revenue from impact fees imposed upon development and collected by a municipality under RSA 674:21, V for construction of or improvement to municipal road systems may be expended upon state highways within the municipality only for improvement costs that are related to the capital needs created by the development. Such improvements may include items such as, but not limited to, traffic signals and signage, turning lanes, additional travel lanes, and guard rails. No such improvements shall be constructed or installed without approval of the state department of transportation. In no event shall impact fees be used for any improvements to roads, bridges, or interchanges that are part of the interstate highway system. Nothing in RSA 674:21, V shall be construed as allowing or authorizing additional impact fees merely by virtue of having approved the expenditure of collected fee revenue for construction of or improvement of state highways, nor shall it be construed as allowing the adoption of new impact fees devoted to assessing impacts to state highways.

(l) No later than 60 days following the end of the fiscal year, any municipality having adopted an impact fee ordinance shall prepare a report listing all expenditures of impact fee revenue for the prior fiscal year, identifying the capital improvement project for which the fees were assessed and stating the dates upon which the fees were assessed and collected. The annual report shall enable the public to track the payment, expenditure, and status of the individually collected fees to determine whether said fees were expended, retained, or refunded.

VI. (a) In this section, "village plan alternative" means an optional land use control and subdivision regulation to provide a means of promoting a more efficient and cost effective method of land development. The village plan alternative's purpose is to encourage the preservation of open space wherever possible. The village plan alternative subdivision is meant to encourage beneficial consolidation of land development to permit the efficient layout of less costly to maintain roads, utilities, and other public and private infrastructures; to improve the ability of political subdivisions to provide more rapid and efficient delivery of public safety and school transportation services as community growth occurs; and finally, to provide owners of private property with a method for realizing the inherent development value of their real property in a manner conducive to the creation of substantial benefit to the environment and to the political subdivision's property tax base.

(b) An owner of record wishing to utilize the village plan alternative in the subdivision and development of a parcel of land, by locating the entire density permitted by the existing land use regulations of the political subdivision within which the property is located, on 20 percent or less of the entire parcel available for development, shall grant to the municipality within which the property is located, as a condition of approval, a recorded easement reserving the remaining land area of the entire, original lot, solely for agriculture, forestry, and conservation, or for public recreation. The recorded easement shall limit any new construction on the remainder lot to structures associated with farming operations, forest management operations, and conservation uses, and shall specify that the restrictions contained in the easement are enforceable by the municipality. Public recreational uses shall be subject to the written approval of those abutters whose property lies within the village plan alternative subdivision portion of the project at the time when such a public use is proposed.

(c) The submission and approval procedure for a village plan alternative subdivision shall be the same as that for a conventional subdivision. Existing zoning and subdivision regulations relating to emergency access, fire prevention, and public health and safety concerns including any setback requirement for wells, septic systems, or wetland requirement imposed by the department of environmental services shall apply to the developed portion of a village plan alternative subdivision, but lot size regulations and dimensional requirements having to do with

frontage and setbacks measured from all new property lot lines, and lot size regulations, as well as density regulations, shall not apply.

(1) The total density of development within a village plan alternate subdivision shall not exceed the total potential development density permitted a conventional subdivision of the entire original lot unless provisions contained within the political subdivision's land use regulations provide a basis for increasing the permitted density of development within a village plan alternative subdivision.

(2) In no case shall a political subdivision impose lesser density requirements upon a village plan alternative subdivision than the density requirements imposed on a conventional subdivision.

(d) If the total area of a proposed village plan alternative subdivision including all roadways and improvements does not exceed 20 percent of the total land area of the undeveloped lot, and if the proposed subdivision incorporates the total sum of all proposed development as permitted by local regulation on the undeveloped lot, all existing and future dimensional requirements imposed by local regulation, including lot size, shall not apply to the proposed village plan alternative subdivision.

(e) The approving authority may increase, at existing property lines, the setback to new construction within a village plan alternative subdivision by up to 2 times the distance required by current zoning or subdivision regulations, subject to the provisions of subparagraph (c).

(f) Within a village plan alternative subdivision, the exterior wall construction of buildings shall meet or exceed the requirements for fire-rated construction described by the fire prevention and building codes being enforced by the state of New Hampshire at the date and time the property owner of record files a formal application for subdivision approval with the political subdivision having jurisdiction of the project. Exterior walls and openings of new buildings shall also conform to fire protective provisions of all other building codes in force in the political subdivision. Wherever building code or fire prevention code requirements for exterior wall construction appear to be in conflict, the more stringent building or fire prevention code requirements shall apply.

VII. In this section, "integrated land development permit option" means an optional land use control to allow a project to proceed, in whole or in part, as permitted by the department of environmental services under RSA 489.

Source. 1983, 447:1. 1988, 149:1, 2. 1991, 283:1, 2. 1992, 42:1. 1994, 278:1. 2002, 236:1, 2. 2004, 71:1, 2; 199:2, 3. 2005, 61:1, 2. 2008, 63:1. 2012, 106:1, 2. 2013, 270:5, 6. 2015, 31:1, eff. July 6, 2015. 2016, 6:3, 4, eff. June 1, 2017.

John & Kristen Marois
303 Curtis Farm Road
Wilton, NH 03086

April 9, 2020

Timeline (7 pages)

Wilton, NH ZBA Chair, Mr. Neil Faiman

Dear Mr. Faiman,

Below is the timeline of events leading up to the appeal of the impact fee assessment

Early during October 2019, I (John) met with the Building Inspector, Norma Ditri to discuss our thoughts about the project. She provided sections 5.0 through 6.4.3 of the zoning ordinance. We discussed our ideas and it was determined that what we were discussing was allowed, and it would be considered and ADU. There was no mention of an impact fee whatsoever.

Mid October I (John) applied for the permits, and the permits were issued on October 21, 2019. I paid for and obtained the permits on October 21, 2019. There was no mention of an impact fee whatsoever.

On December 12th, 2019 when the Building inspector (Norma) performed an on-site inspection she asked me if anyone from town hall had discussed the impact fee, no one had, that was the first I heard of it.

On February 14th, 2020 when the Building Inspector performed an on-site inspection, nothing was mentioned about an impact fee.

On February 27th, 2020 I received an email from the Building Inspector (Norma) saying town has an impact fee that is applicable to the creation of an ADU & it would be due prior to issuance of CO. (Attached)

On February 27th, 2020 I responded via email. (Attached)

On March 12, 2020, I received documents as well as an invoice for an impact fee the Building Inspector (Norma) assessed via email, and I was directed to Michele Decoteau with any questions. (Attached)

On March 30, 2020, Email to Michele Decoteau requesting opportunity to present to Select Board or other method. (Attached)

On March 31, 2020, Email from Michele Decoteau describing process to appeal. (Attached)

Sincerely,
John & Kristen Marois

John Marois

From: Norma Ditri <nditri@wiltonnh.gov>
Sent: Thursday, February 27, 2020 11:00 AM
To: maroisjm@gmail.com
Cc: Jane Farrell; Michele Decoteau; granitehillmunisvs@hotmail.com
Subject: Accessory Dwelling Unit

Hi John,

The Town of Wilton has an Impact Fee that is applicable to the creation of a new dwelling unit.
The specific wording includes:

25.2.2 New Development. For the purpose of impact fee assessment, new development may include the following land use changes: *(March 2011)*

- a. The construction of any new dwelling unit; or
- b. Changes to an existing structure that would result in a net increase in residential living area or the number of dwelling units *(Amended March 2018)*

The link to Wilton's ZBA website where the ordinance is located:

https://wiltonzba.org/ordinance/ordinance_25.html

Please read through this section.

The fee for an ADU is \$3,798, which is due before a Certificate of Occupancy can be issued.

The last section of Section 25 is the appeals process should you choose to appeal my decision (to impose the impact fee on your ADU)

I have been out on medical leave for 7 weeks and I don't want this issue to be a surprise when you are finished and are seeking a CO.

Please don't hesitate to call me with any questions.

Sincerely,
Norma Ditri
Building Inspector
Town of Wilton NH
603-654-3960 office
603-801-1640 cell

Hours: **M&T 9-4 TH 11-6 PM**

2

John Marois

From: John Marois <maroisjm@gmail.com>
Sent: Thursday, February 27, 2020 4:26 PM
To: 'Norma Ditri'
Cc: 'Jane Farrell'; 'Michele Decoteau'; 'granitehillmunisvs@hotmail.com'
Subject: RE: Accessory Dwelling Unit

Hi Norma,

I hope your recovery is going well. Your assessment for an impact fee of \$3,798 is a huge surprise! If an impact fee was going to be assessed that should have been shared during our preliminary discussions, application meeting, or prior to the permit being approved and issued on October 21, 2019. That would have been a very important piece of information to have for our decision on whether to proceed with this project or not because the impact fee is nearly as much as what this project is costing us. We have not changed the square footage at all, we simply are making minor modifications to the layout.

According to the Wilton Zoning Ordinance 25.5.2, and NH RSA 674:21.V.d "... Impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit or other appropriate permission to proceed..." There was never a mention by anyone at Town Hall regarding about this before or when the permits were approved & issued so you can see how much of a surprise this is to us. This impact fee assessed was not done in accordance with the regulations.

We respectfully request the impact fee you have assessed for this project on February 27, 2020 be waived.

We look forward to your response.

Best regards,

John & Kristen Marois

From: Norma Ditri <nditri@wiltonnh.gov>
Sent: Thursday, February 27, 2020 11:00 AM
To: maroisjm@gmail.com
Cc: Jane Farrell <jfarrell@wiltonnh.gov>; Michele Decoteau <mdecoteau@wiltonnh.gov>; granitehillmunisvs@hotmail.com
Subject: Accessory Dwelling Unit

Hi John,

The Town of Wilton has an Impact Fee that is applicable to the creation of a new dwelling unit. The specific wording includes:

25.2.2 New Development. For the purpose of impact fee assessment, new development may include the following land use changes: (March 2011)

- a. The construction of any new dwelling unit; or
- b. Changes to an existing structure that would result in a net increase in residential living area or the number of dwelling units (Amended March 2018)

John Marois

From: Norma Ditri <nditri@wiltonnh.gov>
Sent: Thursday, March 12, 2020 5:39 PM
To: maroisjm@gmail.com
Cc: Michele Decoteau
Subject: Accessory Dwelling Unit
Attachments: Impact Fee Ordinance.docx; ImpactFees.pdf; Invoice Marois.pdf

Hi John,
I am recovering very well, thank you.

The building permit does state the scope of work is an accessory dwelling unit. Our ordinances are available to the public via our website. I do recall mentioning an impact fee on my last visit, however, I have no documentation to confirm that. You are correct in what RSA 674:21 V (d) states: All impact fees imposed pursuant to this section shall be assessed prior to, or as a condition for, the issuance of a building permit or other appropriate permission to proceed with development."

I have consulted with the Town Administrator and the Select Board. My role is the enforcement of the regulations, however, there is an appeals process if you disagree with my decision. There is a 30 day appeal period after the assessment of the fee from the Building Official to when the appeal shall happen. I am officially assessing the impact fee as of today and have attached an invoice.

Our ZBA website has information on the application process (<https://wiltonzba.org>), their meeting schedule and other information. If you have questions about the process, contact Michele Decoteau at 654-9451 X309.

I am genuinely sympathetic to your situation.

Norma

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Norma Ditri
Building Inspector
Town of Wilton NH
603-654-3960 office
603-801-1640 cell

Hours: **M&T 9-4 TH 11-6 PM**

INVOICE

Date	Invoice #
03/12/2020	2020

Bill To:
Marois Joint Rev. Trust
303 Curtis Farm Road
Wilton NH 03086

Quantity	Description	Rate	Amount
1	Accessory Unit Impact Fee 303 Curtis Farm Road Wilton NH Accessory Unit Map & Lot: B-039-03		\$3,798.00
<p>NET DUE 30 DAYS – Interest of 1.5% per month (14%/yr) charged on overdue amounts.</p>			

5

John Marois

From: John Marois <maroisjm@gmail.com>
Sent: Monday, March 30, 2020 7:18 PM
To: 'Michele Decoteau'
Cc: 'WiltonTA@wiltonnh.gov'; 'Norma Ditre'
Subject: RE: Fees

Hi Michele,

My Attorney sure thinks I should appeal it. I understand the ZBA is the method you said I would need to go through, I don't necessarily agree with that.

I hope this is something we could work out with the Select Board or other means. I would have also included the Select Board members & Administrative Assistant in this email if I could have found their addresses on the town website.

The intent of both the State statute and the Wilton ordinance is clearly to assess the fee before the building permit or project approval is granted. There was never a mention that the fee would be assessed leading up to during preliminary meetings or when the permit was being issued on October 21, 2019. On December 12th 2019 when Norma performed an inspection she did ask me if anyone from town hall had discussed the impact fee, no one had, that was the first I heard of it. On February 14 when the building inspector performed another inspection there again was no mention of it. In this case it was assessed almost 5 months later. I feel this is unfair, we would have definitely reconsidered everything if we knew there was going to be an impact fee assessed. From the little research we have done so far, it is clear Wilton has not assessed impact fees for many projects that fall under this ordinance and have not exactly kept proper records of some impact fees that were received. That is not fair to every taxpayer in town, not to mention concerning, although it does sound like things are changing.

We moved to town and have owned a home in Wilton since 1996. Just over the past 10 years, our one property, B-39-3, has contributed \$194,374.00 in property taxes to the Town of Wilton. That is an average of \$19,473 per year and is an enormous amount of money our property has generated for the town. We have not added any new living space or square footage at all for this project, simply reconfigured some existing space. We have not increased the number of bedrooms or bathrooms that this house was originally designed for. We are having a real hard time swallowing the ZBA application fee and abutter fees, not to mention the impact fee. We understand the intent of the ordinance, when used as designed, but that has not been the case. We obviously have called Wilton home for quite some time and are willing to contribute our fair share, but don't think the impact fee assessed is fair.

If at all possible to discuss / present this issue to the Select Board or another method in an effort to reach a reasonable outcome would be preferred.

We are putting a package together, and depending on your response we may need more information because we can only obtain several years' worth of information from the town website. With Covid 19 restrictions, I cannot visit town hall to get the additional info I would want, so if we need more impact fee records, etc. will you or someone else be able to send them electronically?

Thank you for your consideration,

John & Kristen Marois
303 Curtis Farm Rd
Wilton NH
603-765-1676
maroisjm@gmail.com

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John Marois

From: Michele Decoteau <mdecoteau@wiltonnh.gov>
Sent: Tuesday, March 31, 2020 10:39 AM
To: John Marois
Cc: Janice Pack; Norma Ditri; Paul Branscombe
Subject: RE: Fees

Good morning John,

Thank you for your email. I have added Paul Branscombe, Town Administrator, and Janice Pack, the Select Board's Assistant to this email so you have their addresses.

At the direction of the Select Board and Planning Board, I have been in conversation with Town Counsel to clarify many of the issues you brought up. The Town needs a consistent, reliable process for the assessment, accounting, and appeal of impact fees. The Town has had impact fees for nearly 20 years and it has only been in the last few that the Town is worked to assess them regularly and some residents have requested an appeal process. The steps of the whole process are outlined in the Land Use Ordinances, Section 25. And just because it is outline in that section, this does not mean the process is crystal clear!

After consultations with Town Counsel, the appeal process is this:

If an applicant is unhappy with a decision by the Building Inspector, they may appeal the decision through the Zoning Board of Adjustment.

If an applicant is unhappy with a decision by the Planning Board on a subdivision, they may appeal the decision through the Hillsboro County Superior Court.

Since you are an applicant to the Building Department, you may appeal her decision through the ZBA. It sounds like you have a packet ready for this option. I will remind you that today is the ZBA deadline.

You may at any time request documents from me – I am happy to help and you can email Jane Farrell, Town Clerk for tax documents (jfarrell@wiltonnh.gov)

Thank you,
Michele

From: John Marois [mailto:maroisjm@gmail.com]
Sent: Monday, March 30, 2020 7:18 PM
To: Michele Decoteau <mdecoteau@wiltonnh.gov>
Cc: Paul Branscombe <wiltonta@wiltonnh.gov>; Norma Ditri <nditri@wiltonnh.gov>
Subject: RE: Fees

Hi Michele,

My Attorney sure thinks I should appeal it. I understand the ZBA is the method you said I would need to go through, I don't necessarily agree with that.

I hope this is something we could work out with the Select Board or other means. I would have also included the Select Board members & Administrative Assistant in this email if I could have found their addresses on the town website.

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